with the proviso. The standard rent of the sub-let room, that is, the rent at which it was first let separately, was irrelevant in determining the rent of the room under section 22.

For the reasons given above I come to the conclusion that the Board had no jurisdiction under section 11(b) of the Ordinance to vary the order of the 3rd July, 1962. I also hold that the Board had no jurisdiction to do so under section 11(a), as there was no evidence that the facts of the case affecting the question of rent had materially altered since the order of the 3rd July, 1962, was made. And I hold that the power given by section 9(1)(b) to the Board to review, vary or set aside any order made by it is limited to the cases set out in section 11.

I accordingly set aside the order made by the Board in Application No. 169 of 1964 on the 4th June, 1965, and restore the order made by the Board on the 3rd July, 1962. I also order the respondents to pay the applicants the costs of this application.

Order accordingly.

Solicitors: *S. K. Lee; R. C. H. Lim & Co.*

PUBLIC PROSECUTOR v. CHENG MENG BONG & ORS.

[A.Cr.J. (Yong J.) January 17, 1966]

[Alor Star — Kedah Criminal Appeal No. 31 of 1965]

Customs Ordinance, 1952, ss. 116 and 117 — Chemist reports — Admissibility of — Presumption — Testing of 10% of each description of package or receptacle in which goods are contained — Not necessary to test 10% of the goods.

Criminal Law and Procedure — Charge — Offences relating to goods carried on different vehicles — Separate trials.

Evidence — Chemist reports — Admissibility of — Presumption under Customs Ordinance, 1952, s. 116.

This was an appeal by the Public Prosecutor against the acquittal of the respondents who were jointly tried on charges of possession of dutiable tobacco. The ground of acquittal was that the chemist reports which were produced to prove that the goods were tobacco were inadmissible. The learned magistrate agreed with the defence counsel who argued that at least 10% of the nett weight of the tobacco should be sent to the Government chemist and as this was not done, the reports of the Government chemist were not admissible.

Held: (1) to raise the presumption under section 116 of the Customs Ordinance it would be sufficient to open, examine and if necessary to test the contents of only 10% of the packages or receptacles of each description and the section does not require the taking of any particular quantity or weight for testing provided samples are taken from the contents of 10% of every description or type of packages or receptacles;

(2) as the offences related to goods carried on different vehicles, the charges should have been separately tried.

Case referred to:—

(1) *Au Ah Lin* v. *Public Prosecutor* [1963] M.L.J. 365.

CRIMINAL APPEAL.

Wan Ismail bin Mohamed Salleh (Deputy Public Prosecutor) for the Public Prosecutor.

Lim Cheng Chuan for the respondents.

Cur. Adv. Vult.

Yong J.: This is an appeal by the Public Prosecutor against the acquittals of the accused Cheng Meng Bong and Tah Kim Sia in Sungei Patani Sessions Court Arrest Case No. 30 of 1964, and Lim Boon Dee and Ang Kee Hiang in Sungei Patani Sessions Court Arrest Case No. 31 of 1964. These two cases were jointly tried by the learned president, who summarily acquitted and discharged all the four accused without calling on their defence and before the prosecution had adduced all its evidence, on the ground that since the two chemist reports were not admissible, there was therefore no evidence to prove that the tobacco found in the two vans Nos. K. 2823 and KA. 1920 were in fact tobacco.

The Public Prosecutor appeals on two grounds, the first of which is as follows:—

"The learned president erred in law in holding that the chemist reports were inadmissible."

For ease of reference in this appeal, the said four accused persons Cheng Meng Bong, Teh Kim Sia, Lim Boon Dee and Ang Kee Hiang shall hereinafter be referred to as the first, second, third and fourth respondents respectively. The facts of these two cases are briefly as follows:—

The first and second respondents were charged for being knowingly concerned in conveying in their van No. K. 2823, dutiable goods, to wit, 16 bales of tobacco weighing 1468 lbs. with intent to defraud the Government of duty thereon amounting to $5,138 and thereby committed an offence under section 131(1)(e) and punishable under section 131(1) of the Customs Ordinance, 1952.

The charge against the third and fourth respondents was that they were knowingly concerned in conveying in their van No. KA. 1920, dutiable goods, to wit, 20 bales of tobacco weighing 1831½ lbs., with intent to defraud the Government of the duty thereon, amounting to $6,410.25 and thereby committed an offence under section 131(1)(e) and punishable under section 131(1) of the said Ordinance.

The prosecution evidence showed that shortly after midnight on 25th April, 1964, at the junction of Butterworth-Alor Star Road and Bedong-Tanjong Dawai Road, two vans loaded with tobacco were seen proceeding to Alor Star. The customs officers, waiting there, gave chase. Mahmud bin Ibrahim, the Assistant Superintendent of Customs, and three of his officers stopped van No. KA. 1920. Seated at the driver's seat

of this van was the third respondent, and by his side was the fourth respondent. When asked both respondents said that they were carrying tobacco and going from Sungei Patani to Alor Star. The goods in the van smelt strongly of tobacco. The other van No. K. 2823 was stopped by Senior Customs Officer (Preventive) No. 34, and two of his assistants.

The two vans were escorted back to Butterworth Customs Office, where the bales of tobacco in both vans were checked, counted and weighed in the presence of the four respondents:—

(a) In van No. KA. 1920 were found 16 bales of tobacco weighing 1468 lbs. and the duty leviable thereon was $5,138.

(b) In van No. K. 2823 were found 20 bales of tobacco weighing 1831½ lbs. and the duty leviable thereon was $6,410.25.

The four respondents were then arrested, the vans and the tobaccos were seized and detained.

From the 16 bales, four packets of tobacco were taken as samples for testing, and from the 20 bales, five packets were taken. On 8th May, 1964, these sample packets were sent to the Government chemist of the Department of Chemistry, Penang, for testing. On 4th June, 1964, the chemist returned these packets with two chemist reports. Copies of these reports were served on first and third respondents on 9th June 1964, and on the second and fourth respondents on 8th July, 1964, which was more than 10 days before the trial.

In the first report the chemist certified that the four packets contained dark-brown vegetable materials which on microscopic and chemical examinations were found to be shredded tobacco leaves consistent with their being manufactured tobacco and their net weights were 7 lbs. 6 ozs., 8 lbs. 4 ozs., 8 lbs. 3 ozs. and 8 lbs. 2 ozs. making a total weight of 31 lbs. 15 ozs. In the second report, the chemist similarly certified that the five packets contained shredded tobacco leaves consistent with their being manufactured tobacco and their net weights were 8 lbs. 1 oz., 7 lbs. 10 ozs., 7 lbs. 14 ozs., 7 lbs. 1 oz. and 8 lbs. 3 ozs. making a total weight of 38 lbs 13 ozs.

When these two chemist reports were tendered as exhibits by the prosecution, it was strenuously objected to by the learned counsel for the defence who claimed that under section 116 of the Customs Ordinance at least 10% of the net weight of the tobacco involved should be sent to the chemist and that since this was not done, the court should refuse to accept the chemist reports in view of section 116 of the said Ordinance.

When the prosecuting officer pointed out to defence counsel that section 116 did not require 10% of the weight but only 10% of the packages or receptacles of each description to be tested, defence counsel argued that 10% of the 16 bales of tobacco found in van No. KA. 1920 would be 1.6 bales, and 10% of the 20 bales of tobacco found in van No. K. 2823 would be 2 bales and that therefore at least 3.6 bales of tobacco should have been sent to the chemist. Agreeing with defence counsel's objections the learned president held that since they had not complied with section 116 of the Customs Ordinance, the two chemist reports were not admissible in evidence and he accordingly rejected them.

The legal point which this appeal court has to decide is whether the learned president was right in holding that the two chemist reports were not admissible in evidence on the ground that they have not complied with section 116 of the Customs Ordinance, 1952.

Section 116 reads as follows:—

"When any goods suspected of being prohibited or uncustomed or otherwise liable to seizure have been seized, it shall be sufficient to open, examine and if necessary test the contents of ten per centum only of each description of package or receptacle in which such goods are contained and the court shall presume that the goods contained in the unopened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened."

It is clear and unequivocal that this section deals with presumptions and not with admissibility of evidence. If the provisions of this section have been complied with, then the court shall presume that the goods contained in the opened packages or receptacles are of the same nature, quantity and quality as those found in the similar packages or receptacles which have been opened. On the other hand if the provisions have not been complied with then no such presumptions will arise.

The learned president was clearly wrong in law in holding that the two chemist reports from the chemist of the Department of Chemistry in Penang were not admissible in evidence on the ground that the provisions of section 116 of the Customs Ordinance, 1952, have not been complied with. He should have considered section 117 of the said Ordinance.

Section 117(1) provides:—

"In any prosecution for a breach of a provision of this Ordinance or of any regulations made thereunder, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecutor, be sufficient evidence of the facts stated therein ....."

Section 117(5) provides:—

"In this section "analyst" means —

(a) a person employed as chemist in the Department of Chemistry, or as chemist or assistant chemist at the Institute of Medical Research."

Under this section, the two chemist reports should have been admitted in evidence.

The Public Prosecutor's second ground of appeal was that the learned president had erred in law in holding that samples taken did not comply with the requirements of section 116 of the Customs Ordinance. The learned president in agreeing with learned defence counsel's submission had in fact held that at least 3.6 bales of tobacco should have been sent to the chemist for testing and not samples of contents from 10% of each of the 16 bales and 20 bales.

In my view, to raise the presumption under section 116 of the Customs Ordinance, it would be sufficient to open, examine, and if necessary to test the contents of only 10% of the packages or receptacles of each description. It would not be necessary to test the contents of every package or receptacle. 10% refers to the packages or receptacles and not to the quantity or weight the goods contained therein. One of the methods for testing the contents is to take samples of the contents for examination. This section does not require the taking of any particular quantity or weight for testing provided samples are taken from the contents of 10% of each description or type of packages or receptacles.

I am fortified in this view by the case of *Au Ah Lin* v. *Public Prosecutor* [1] which dealt with the interpretation of section 61 of the Excise Act, 1961. This section is similar to section 116 of the Customs Ordinance. Lord President Thomson in delivering the judgment of the Federal Court says that section 61 of the Excise Act does not require that samples be taken of the contents of every package or container in question, nor does it require the taking of any particular quantity, and that the words "ten per centum" refer to the packages and not to the contents of each package. The learned president was clearly wrong in holding that 3.6 bales of tobacco should have been sent to the chemist and not merely samples of the same.

The Public Prosecutor's appeal is therefore allowed.

There is another unsatisfactory feature in this trial in the lower court. Although the offences mentioned in the two cases (No. 30/64 and No. 31/64) occurred at or about the same time and place, yet in each case the vehicle with which the offence was committed was different, the bales of tobacco were different, the accused persons involved were different, and the customs officers who stopped the vehicle in each case were different. Each case is complete by itself. What may be tobacco in one vehicle may not be tobacco in the other. When these two cases are jointly tried together, the evidence in one case may unfairly prejudice the accused in the other. In the interest of all, these two cases should be tried separately.

I set aside the order of acquittals in both cases. These two cases are sent back for retrial *de novo* before other presidents of the sessions court. These two cases are to be tried separately by two different presidents.

Order accordingly.

CHINESE BANKERS TRUST CO. LTD. v. LOW CHENG KIAT & ANOR.

[O.C.J. (Ismail Khan J.) January 17, 1966]

[Malacca — Civil Suit No. 46 of 1959]

Land Laws — Landed property — Claim for possession — Defence of limitation — Licence — Adverse possession — Limitation Ordinance, 1953, s. 9.

Limitation — Licensee in permissive occupation — Claim of adverse possession.

The trustees of an estate claimed possession of a house which had been used as the family house. The defence raised was that of limitation, it being alleged that there had been adverse possession by one Wi Chi Neo for the full statutory period of twelve years. The facts showed that Wi Chi Neo had gone to live in the house as the bride of one of the deceased's son. No rent had been demanded from her.

Held: (1) in this case Wi Chi Neo was only a licensee of the premises and the failure to demand rent from her could not convert the permissive occupation into an adverse one so as to attack the operation of the Limitation Ordinance;

(2) the possession in this case was not adverse and therefore the plea of limitation fails and the plaintiffs were entitled to possession of the premises.

Cases referred to:—

(1) *Dawkins* v. *Baron Penrhyn* (1878) App.Cas. 51.

(2) *Hubbuck* v. *Wilkinson* [1897] 1 Q.B. 90, 91.

(3) *Buck* v. *Howarth* [1947] 1 All E.R. 342.

(4) *Booker* v. *Palmer* [1942] 2 All E.R. 674.

(5) *Cobb & Anor.* v. *Lane* [1952] 1 All E.R. 1199.

(6) *Ejas Ali Qidwai* v. *Special Manager, Court of Wards Balrampur Estate & Ors.* A.I.R. 1935 P.C. 53 at p. 56.

(7) *Corea* v. *Appuhamy* [1912] A.C. 231 at p. 236.

CIVIL SUIT.

R. H. V. Rintoul for the plaintiffs.

F. K. Sellar for the dependants.

Cur. Adv. Vult.

Ismail Khan J.: The plaintiffs are the Chinese Bankers Trust Company Limited trustees of the will of one Low Guan Swi, deceased. They claim possession of all that part and parcel of ground with a brick house and outhouses erected thereon known as No. 55, (formerly No. 32) Heeren Street, Malacca, described in an indenture dated 9th May, 1898, Registered No. 195 of 1889, hereinafter called the "said premises". There is also a claim for mesne profits at the rate of $200 per mensem.

Until her death in 1960, one Wi Chi Neo was